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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.606(b),)
Table of Allotments,)
Television Broadcast Stations.)
(Wildwood and Somers Point, New Jersey))
)
Amendment of Section 73.622(b),)
Table of Allotments,)
Digital Television Stations)
(Wildwood and Somers Point, New Jersey))

MM Docket No.
RM-

TO: Chief, Video Division
Media Bureau

PETITION FOR RULEMAKING

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July 25, 2002

SOUTH JERSEY RADIO, INC.

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SUMMARY

The purpose of this petition is to take the first step to relicensing of WMGM-TV from Wildwood, New Jersey to Somers Point, New Jersey, a community centrally located in WMGM-TV's three county market area of Atlantic, Cape May and Cumberland Counties in southeastern New Jersey. WMGM-TV seeks amendment of the TV and Digital TV Tables of Allotments, Sections 73.606(b) and 73.622(b) of the FCC's Rules, respectively, in order to prevent Comcast Cable Communications, Inc., the dominant cable television firm in southern New Jersey, from deleting WMGM-TV from the Comcast cable system serving Cumberland County and the Hammonton area in Atlantic County. Such a deletion would damage the ability of New Jersey's only network affiliated television station to continue to serve the public interest, convenience and necessity.

Comcast is attempting to use an anomaly in the FCC's cable television rules to prevent WMGM-TV from reaching viewers in WMGM-TV's service area with local news and information. Not coincidentally, Comcast offers a local news service called "CN8", which would benefit commercially were Comcast to get away with the deletion of WMGM-TV from

its Cumberland County and Hammonton system, a clear anti-competitive and unfair trade practice.

As to Section 307(b) considerations, WMGM-TV would not be moving its transmitter site, as it already provides city-grade signal strength to all of Somers Point. Somers Point, an incorporated city, has more than twice as many residents as Wildwood. Wildwood would continue to receive city-grade service from WMGM-TV, and WMGM-TV would continue to serve Wildwood in the manner that it does now. Therefore, a fair, efficient and equitable distribution of broadcast facilities would be achieved by reallocating analog Channel 40 and digital Channel 36 to Somers Point, New Jersey.

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PETITION FOR RULEMAKING

South Jersey Radio, Inc. (SJR), licensee of Television Broadcast Station WMGM-TV, Channel 40, Wildwood, New Jersey, and permittee of a new Digital Television Station on Channel 36 at Wildwood, New Jersey, File No. BPCDT-19991029AFH, pursuant to Section 1.420(i) of the Commission's Rules, hereby respectfully submits this Petition for Rulemaking, and respectfully requests that the Commission amend both the Television Table of Allotments, 47 CFR §73.606(b), and the Digital Television Table of Allotments, 47 CFR §73.622(b), in the following respects:

Section 73.606(b) :

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Wildwood, New Jersey	40	--
Somers Point, New Jersey	--	40

Section 73.622(b) :

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Wildwood, New Jersey	36	--
Somers Point, New Jersey	--	36

In so doing, the following is shown:

Preliminary Statement

1. Section 1.420(i) of the Commission's Rules provides that in the course of a rulemaking proceeding to amend the television table of allotments, "the Commission may modify the license or permit of a [TV station] to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or licensee's present assignment".

2. In the instant case, SJR, the licensee of station WMGM-TV, seeks to reallocate its assigned analog Channel 40 and digital channel 36 from Wildwood, New Jersey to Somers Point, New Jersey, a community located 40.41 km (25.11 miles) north-northeast of Wildwood in Atlantic County, New Jersey. The use of analog Channel 40 at Somers Point is mutually-exclusive with the use of analog Channel 40 at Wildwood. Likewise, The use of digital Channel 36 at Somers

Point is mutually-exclusive with the use of digital Channel 36 at Wildwood.

3. The standard under which this Petition must be considered is whether the proposed reallocation of analog Channel 40 and digital Channel 36 from Wildwood to Somers Point would result in a preferential arrangement of allotments pursuant to the Commission's Change of Community procedures. See **Modification of FM and TV Authorizations to Specify a New Community of License**, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

4. This proposal does not involve the relocation of WMGM-TV's transmitter site (39° 07' 28" N, 74° 45' 56" W), which is located virtually halfway between Wildwood (38° 59' 29" N, 74° 48' 54" W) and Somers Point (39° 19' 02" N, 74° 36' 24" W). Therefore, this case is virtually identical to MM Docket No. 91-342, in which the Commission amended its television table of allotments to permit the "paper move" of KXII(TV), Channel 12, from Ardmore, Oklahoma to Sherman, Texas. **Television Table of Allotments, Ardmore, Oklahoma and Sherman, Texas**, 7 FCC Rcd 4846 (1992).

4. As will be demonstrated in greater detail below, the granting of this Petition will result in a first local television station for Somers Point, an incorporated city with more than twice as much population as Wildwood (11,614 versus 5,436 respectively, according to the 2000 United

States Census). As Somers Point is an independent community to which a broadcast station may be licensed, a grant of this Petition would serve the public interest, convenience and necessity.

Statement of Interest

5. Should the Commission grant this Petition, SJR will file any and all appropriate and necessary applications to effectuate the modification of his authorization for WMGM-TV to specify Somers Point, New Jersey as its community of license, and it would then operate WMGM-TV as a Somers Point station.

Reasons for Filing This Petition

6. WMGM-TV is New Jersey's only network-affiliated television station. So far as we know, WMGM-TV (which signed-on as WCMC-TV on January 25, 1966) has always been an affiliate of the NBC television network. Among other community services, WMGM-TV provides four local newscasts per day, the only television newscasts specifically tailored to provide local news and information to the three southeasternmost counties of New Jersey: Atlantic; Cape May; and Cumberland. Given the unique geography and road system in place in this three-county area, WMGM-TV's studios and offices are centrally located at 1601 New Road (U. S. Highway 9) in Linwood, New Jersey, roughly one and one-half miles north of the center of Somers Point. Wildwood itself

is located less than five miles from the southernmost tip of New Jersey, Cape May. The largest cities in WMGM-TV's market area are Atlantic City (in Atlantic County) and Vineland (in Cumberland County).

7. On July 17, 2002, WMGM-TV received a letter from Comcast Cable Communications, Inc. (Comcast) informing it that, "effective on a date no earlier than August 27, 2002", Comcast "has determined to delete WMGM-TV" from Comcast's Vineland, New Jersey cable system (Exhibit A). According to **TV & Cable Factbook No. 64, Cable Volume**, p. D-1123, the Vineland cable system serves not only Vineland, but also the adjacent communities of Bridgeton, Buena, Hammonton, Hopewell Township (Cumberland County), Millville, Newfield, Shiloh and Upper Deerfield Township. To the best of our knowledge, WMGM-TV has been carried on this cable system for at least the past 20 years (the present ownership of WMGM-TV has had an ownership stake in WMGM-TV since 1981).

8. Thus, Comcast intends to deprive WMGM-TV of cable carriage in virtually all cable households in one of WMGM-TV's three "home counties". This would be catastrophic for WMGM-TV's future as an NBC affiliate serving southeastern New Jersey (Comcast intends to continue carriage of NBC affiliate WCAU-TV, Channel 10, Philadelphia, Pennsylvania). Furthermore, Comcast's arrogant action does not serve the public interest, as it shows its mistaken belief that the

needs of Cumberland County, New Jersey residents can be better served by an out-of-state television station than by a local, in-state television station.

9. The basis in the FCC's Rules for Comcast's action is in Section 76.56(b)(5), which states that a cable operator is "not required to . . . carry the signals of more than one local commercial television station affiliated with a particular broadcast network", and, if the cable operator chooses to delete a duplicative network affiliated station from its system that would otherwise have "must carry" rights, "such cable operator shall carry the station whose community of license reference point . . . is closest to the principal headend of the cable system".

10. As it turns out, Comcast has an ulterior motive for deleting WMGM-TV's signal from its Cumberland County and Hammonton cable system. Comcast operates a local news and information channel called "CN8". That channel is in competition with the local newscasts and local information provided on WMGM-TV. Comcast has a real motive to engage in anti-competitive and unfair trade practices, to eliminate a competitor for the viewer interested in local New Jersey news and information, thereby damaging WMGM-TV's ability to serve the rest of its market (Atlantic and Cape May counties).

11. Wildwood, WMGM-TV's present community of license, is 57.83 km (35.94 miles) south of Vineland, while Philadelphia, WCAU-TV's community of license, is 53.09 km (32.99 miles) north of Vineland. Wildwood is 71.61 km (44.5 miles) south of Hammonton, which is 46.75 km (29.05 miles) southeast of Philadelphia.

12. However, Somers Point, on information and belief the largest city within WMGM-TV's city-grade contour, is just 40.67 km (25.27 miles) east of Vineland, and is just 39.25 km (24.39 miles) southeast of Hammonton.

13. Section 76.5(pp) of the Rules provides the definition of the term "headend", which is as follows:

(pp) Principal headend.

(1) The headend, in the case of a cable system with a single headend or,

(2) In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of subpart D of this part. The designation of a principal headend shall be made by May 3, 1993, and each cable system shall place in its public file the location of its designated principal headend by June 17, 1993, as provided in § 76.1708. Except for good cause, an operator may not change its choice of principal headend.

Therefore, if WMGM-TV were permitted to change community of license from Wildwood to Somers Point, which is a "paper" move designed to reflect the reality of the center of WMGM-TV's market area, Comcast could not legally delete WMGM-TV from its very large cable system serving Vineland (2000 Census population 56,271), Hammonton (2000 Census population

12,604), Millville (2000 Census population 26,847), Bridgeton (2000 Census population 22,771) and vicinity. Therefore, the public interest inherent in protecting and preserving access of viewers in the three southeastern New Jersey counties to the only network-affiliated television station in New Jersey, and the substantial local news and information it provides, in addition to the Section 307(b) factors present in this case, requires that the Commission amend its two television tables of allotment at the earliest possible time.

14. WMGM-TV's case, and its inherent equities, are identical to the **Ardmore and Sherman** case cited above. There, KXII, the CBS affiliate for the Red River Valley region between Dallas and Oklahoma City, was not given credit by the national ratings services for one of its home counties, Grayson County, Texas, which included the largest city in its market, Sherman, and Sherman's twin city of Denison. Upon the reallocation of Channel 12 from Ardmore to Sherman, the "Ardmore-Sherman-Ada" television market suddenly increased from (on information and belief) from the 189th largest market to approximately the 159th largest market, even though KXII did not move its transmitter site and there was no sudden influx of population into its market area. The reallocation was done to reflect industry realities--KXII took advantage of a "home county" provision

in the ratings services' rules regarding allocation of counties among the various television markets; and when KXII was considered by the FCC to be licensed to Sherman, Texas, because KXII had the requisite share of viewing in Grayson County (even though overall the four major VHF television stations from Dallas had a higher aggregate share in Grayson County than did KXII), Grayson County was added to the market where KXII had been traditionally assigned.

15. In the instant case, WMGM-TV needs to effectuate a "paper move" to Somers Point in order to protect its rights to be carried on a crucial cable television system--were WMGM-TV to be denied access to the Vineland-Hammonton cable system, there would be substantial economic harm to befall WMGM-TV, thereby placing continued local NBC service and continued local news and information in jeopardy to all of southeastern New Jersey. Therefore, the public interest, convenience and necessity would be well served by the granting of this Petition for Rulemaking.

Community Characteristics of Somers Point, New Jersey

16. Somers Point is a community located at the junction of U. S. Highway 9 and New Jersey Route 52, in Atlantic County, just north of the Atlantic-Cape May county line. Somers Point is accessible from exits 29 and 30 on the Garden State Parkway, which as a practical matter forms the west end of Somers Point. Somers Point is listed in the

2000 U. S. Census, with a population of 11,614. It has its own post office and zip code, 08244.

17. According to the "official Somers Point website", <http://www.somerspoint-nj.com/government.htm>, Somers Point is an incorporated city. Its government consists of a Mayor and a seven-member City Council. The City Council meets twice per month. The Mayor is not a member of the City Council but has the authority to break tie votes at the City Council should they occur. A "City Administrator" manages day-to-day municipal services. City government officials are: City Clerk; City Finance Officer; Tax Collector; Tax Assessor; Superintendent of Public Works; Building Official; Chief of Police; Fire Chief; Rescue Squad Chief; Director of Emergency Management; Municipal Court Judge; Municipal Court Administrator; Municipal Prosecutor; and City Solicitor. The following city commissions are part of the Somers Point government structure: Economic Development Advisory Commission; Environmental Commission; Historic Commission; and Recreation Commission. Somers Point has a Sewerage Authority.

18. Somers Point has its own school district, which operates two elementary schools. Somers Point is part of the Mainland Regional High School district, which operates a high school located in the neighboring city of Linwood. In addition, the following private and/or parochial schools are

located in Somers Point: Atlantic Christian School; and St. Joseph's School. Somers Point has a public library.

19. According to the official Somers Point website, Somers Point "is primarily a residential community with a large proportion of its residents employed in professional services or executive positions in the City and in its neighboring communities". The largest employer in Somers Point is Shore Memorial Hospital, a "modern, 380-bed facility", with some 1,400 employees. Somers Point is located on the west bank of the Intracoastal Waterway (also known as Great Egg Harbor), and as a result has a substantial number of businesses, restaurants, marinas and facilities which support pleasure boating and tourism generally. In fact, the CD-ROM software **Directory Assistant, Version 2.1** (Papillon, NE: infoUSA, Inc., 2002) indicates that there are 895 business listings for Somers Point.

20. The following churches and ministries are located in Somers Point: Calvary Bible Church; Christ Episcopal Church; Gift of Love Christian Center; Gospel Outreach, Inc.; Grace Lutheran Church; St. Joseph's Roman Catholic Church; and United Methodist Church.

21. The following fraternal and eleemosynary organizations are either headquartered in or have chapters located in Somers Point: Access One, Inc.; American Legion;

ARC-Atlantic County; Atlantic County Historical Society; Atlantic County Medical Society; Elks Lodge; Jewish Family Services; Parents Without Partners; Shore Surgical Professional Association; Somers Mansion Historic Site; Somers Point Little League; Somers Point Senior League; South Jersey Regional Theatre; and Veterans of Foreign Wars.

22. According to the official Somers Point website, Somers Point's history dates back to 1693, when a community known as Somerset Plantation was formed and thus became the first settlement in Atlantic County, New Jersey. Somers Point was first incorporated as a "borough" in 1886.

Section 307(b) and Technical Considerations

23. WMGM-TV does not propose to relocate the transmitter site for either its existing analog or permitted digital operations. Therefore, there are no mileage separation considerations as a part of this rulemaking request. There is a map appended hereto as Exhibit B that shows that WMGM-TV provides city-grade or better service to all of Somers Point, New Jersey.

24. Section 307(b) determinations for television stations are slightly different than they are for AM or FM stations. In this case, Somers Point has twice the population of Wildwood, and neither community is truly suburban in nature (Somers Point is separated from Atlantic City by a broad expanse of salt marshes and the Intracoastal

Waterway), and, generally speaking, it would be entitled to a dispositive Section 307(b) preference vis a vis Wildwood.

25. The Commission has stated that, in television Section 307(b) determinations, that it basically makes no difference where a television station is licensed if it would serve a market identical to the market proposed to be served by another applicant specifying another community of license. In ***Washington's Christian Television Outreach, Inc.***, 99 FCC 2d 395, ¶¶ 18-19 (Rev. Bd. 1984), the Review Board wrote:

We recently considered a very similar situation in ***Cleveland Television Corp.***, 91 FCC 2d 1129, 1136-37 (Rev. Bd. 1982), *rev. den.*, FCC 83-235, released May 18, 1983 (Comm'n), *aff'd*, 732 F.2d 962 (D. C. Cir. 1984). Distinguishing the situation with respect to radio stations, the Board there thoroughly traced Commission precedent and, in short, found that:

Television stations typically serve much larger areas than radio stations, involve considerably greater capital investments, and require larger audiences to attract channels available is much more limited and, consequently, the service area for Section 307(b) purposes 'should be defined in terms of coverage and not in terms of artificial political boundaries.' ***Evening Star Broadcasting Co.***, 27 FCC 2d 316, 321 n.4, 20 RR 2d 1313, 1321, n. 3a, *aff'd sub nom Stone v. FCC*, 466 F.2d 316 (D. C. Cir. 1972). Therefore, television stations--unlike FM broadcast stations--are generally considered as providing 'an areawide, rather than a localized service.' ***St. Louis Telecast, Inc.***, *supra*, 22 FCC at 713, 12 RR at 1369. 91 FCC 2d at 1137. [FN48]

26. Therefore, there is no reason not to reallocate analog Channel 40 and digital channel 36 from Wildwood to Somers Point. While we are unaware of any new analog or digital channel that can be allocated to Wildwood in place

of the existing analog channel 40 and digital channel 36, from an actual service-to-viewer standpoint, it makes no difference whether WMGM-TV is licensed to Wildwood or to Somers Point. WMGM-TV is going to continue serving Wildwood and surrounding Cape May County in the same fashion as it does presently. Wildwood and Somers Point are part of the three-county market that WMGM-TV presently serves, and intends to keep on serving. Our transmitter site will remain at the same place near Avalon, New Jersey. The reasons for this requested reallocation of analog Channel 40 and digital Channel 36 were explained above: a necessity for our channel allocation to reflect the center of our market, so that the cable television rules cannot be used by Comcast to injure or destroy southeastern New Jersey's only network-affiliated television station and southeastern New Jersey's only television broadcast news operation. Wildwood is at the southern edge of our market, just five miles from the southern tip of New Jersey, and is located on a barrier island. Somers Point is just north of the Cape May-Atlantic county line, and is located on New Jersey's mainland. The public interest, convenience and necessity would be well served by granting the requested reallocation of analog channel 40 and digital channel 36 from Wildwood to Somers Point, New Jersey.


Conclusion

27. Somers Point, New Jersey is an independent community that is twice as large as Wildwood. The reallocation of analog channel 40 and digital channel 36 from Wildwood to Somers Point would be fully consistent with a "fair, efficient and equitable distribution" of broadcast channels among the states and communities as required by 47 U.S.C. §307(b). The precedent for this type of community of license change was established in **Ardmore, Oklahoma and Sherman, Texas**, *supra*, and as a result the reallocation is in the public interest, convenience and necessity.

WHEREFORE, South Jersey Radio, Inc. urges that this Petition for Rulemaking **BE GRANTED** and that analog UHF Television Channel 40 and digital Television Channel 36 **BE REALLOCATED** from Wildwood, New Jersey to Somers Point, New Jersey.

Respectfully submitted,

SOUTH JERSEY RADIO, INC.

By 
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Its Attorney

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July 25, 2002

EXHIBIT A



Comcast Cable Communications, Inc.
901 West Leeds Avenue
Absecon, NJ 08201
609.677.7300 Tel
609.677.7301 Fax

July 17, 2002

Ms. Jane Stark
General Manager
WMGM-TV
1601 New Road
Linwood, New Jersey 08221

Via Hand Delivery

Dear Ms. Stark:

After much review, we regret to inform you that Comcast's Vineland, New Jersey cable system has determined to delete WMGM-TV, effective on a date no earlier than August 27, 2002.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Piperato", written over a horizontal line.

Robert Piperato
General Manager

cc: Ruth Blank, Area Vice President
Howard Green, WMGM

EXHIBIT B

